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Advisability of the appointment of a special rapporteur on laws that discriminate against women

Report of the Secretary-General

Summary

The present report has been prepared pursuant to Commission on the Status of Women resolution 49/3 of 11 March 2005 on the advisability of the appointment of a special rapporteur on laws that discriminate against women. It presents an overview of international human rights instruments, policy documents and mechanisms aimed at eliminating laws that discriminate against women, as well as views of Member States and Observers, the Committee on the Elimination of Discrimination against Women and the Office of the United Nations High Commissioner for Human Rights. It concludes with implications as well as recommendations for consideration by the Commission on the Status of Women at its fiftieth session.

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I. Introduction

1. In its resolution 49/3 of 11 March 2005, the Commission on the Status of Women decided to consider, at its fiftieth session, the advisability of the appointment of a special rapporteur on laws that discriminate against women, bearing in mind the existing mechanisms with a view to avoiding duplication. The Commission requested the Secretary-General to report to the Commission on the implications of the creation of the position of such a special rapporteur. It also requested the Secretary-General to include in his report the views of Member States and relevant United Nations bodies, including the Committee on the Elimination of Discrimination against Women and the Office of the United Nations High Commissioner for Human Rights (OHCHR). The present report is submitted in accordance with that request.

2. Responses to the Secretary-General's request of 25 July 2005 were received from the following 26 Member States and Observers: Argentina, Barbados, Canada, Colombia, Guinea, the Holy See, the Islamic Republic of Iran, Jamaica, Lebanon, Maldives, Mauritius, Mexico, Namibia, New Zealand, Pakistan, Palau, the Philippines, the Republic of Korea, the Russian Federation, Switzerland, Tonga, Turkey, the United Kingdom of Great Britain and Northern Ireland (on behalf of the States Members of the United Nations that are members of the European Union), the United States of America, Uruguay and Viet Nam.

3. The Committee on the Elimination of Discrimination against Women formulated views on the matter at its thirty-third session (see A/60/38). OHCHR also provided views.

4. Section II of the present report analyses international human rights instruments and policy documents relevant to the issue of the elimination of laws that discriminate against women, as well as mechanisms that address laws that discriminate against women. Section III summarizes the views received from Member States and Observers, the Committee on the Elimination of Discrimination against Women and OHCHR. Section IV presents implications of the creation of such a position and recommendations for consideration by the Commission on the Status of Women.

II. Elimination of laws that discriminate against women: international human rights instruments, policy documents and mechanisms[1]

A. International human rights instruments and policy documents

5. The right to equality before the law without discrimination on the basis of sex is enshrined in international human rights instruments and included in policy documents. Article 1 of the Charter of the United Nations proclaims the need to promote and encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion. The 1948 Universal Declaration of Human Rights (General Assembly resolution 217 A (111)) states that "all are equal before the law" and that everyone is entitled to all the rights and freedoms set forth in the Declaration, "without distinction of any kind", including

sex. The core human rights treaties reflect the general principle that the rights set out in the treaty should be enjoyed without distinction, listing sex as one of the prohibited grounds of discrimination.

6. The 1979 Convention on the Elimination of All Forms of Discrimination against Women (General Assembly resolution 34/180) is the most important instrument for the practical realization of the principle of equality of men and women. The Convention provides a comprehensive definition of "discrimination against women" in article 1 and addresses in detail the obligations of States parties to eliminate discrimination and achieve women's enjoyment of human rights and fundamental freedoms, on a basis of equality of men and women, in the political, economic, social, cultural, civil or any other field. It calls on States parties "to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women," and to "repeal all national penal provisions which constitute discrimination against women". It imposes a general obligation on States parties "to accord to women equality with men before the law", and addresses women's right to equality in areas such as political life, nationality, civil matters, and marriage and family relations. The elimination of discriminatory laws is considered to be a necessary step in the realization of de facto equality between women and men.

7. A number of policy instruments of the United Nations emphasize the need to eliminate discrimination against women in order to achieve gender equality. The Beijing Platform for Action, adopted at the 1995 United Nations Fourth World Conference on Women, includes among its strategic objectives the need to ensure equality and non-discrimination under the law and in practice,[2] and recommends that States revoke any remaining laws that discriminate on the basis of sex and remove gender bias in the administration of justice.[2]

8. This recommended action was restated at the twenty-third special session of the General Assembly in 2000 and a target date for implementation was established. In the outcome document of the special session, the General Assembly called on Governments to create and maintain a non-discriminatory and gender-sensitive legal environment by reviewing legislation with a view to striving to remove discriminatory provisions as soon as possible, preferably by 2005, and eliminating legislative gaps that leave women and girls without protection of their rights and without effective recourse against gender-based discrimination. (General Assembly resolution S.23/3, para. 68 (b)).

9. In 2005, the Commission on the Status of Women adopted a declaration on the occasion of the tenth anniversary of the Fourth World Conference on Women, in which it reaffirmed the Beijing Platform for Action and the outcome document of 2000 and pledged to undertake further action to ensure their full and accelerated implementation (see E/2005/27, chap. I. A, para. 1).

10. The 2005 World Summit Outcome (General Assembly resolution 60/1) confirmed the importance of establishing and maintaining a legal framework supportive of the goal of gender equality. In the Outcome, Member States committed themselves to promote gender equality and eliminate pervasive gender discrimination by eliminating all forms of discrimination and violence against women and the girl child, including by ending impunity, in accordance with the obligations of States under international human rights law. The Outcome also called upon States to continue their efforts to eradicate policies and practices that

discriminate against women and to adopt laws and promote practices that protect the rights of women and promote gender equality.

11. Notwithstanding these instruments and their importance, the goal of eliminating all sex discriminatory laws has so far not been achieved. The Committee on the Elimination of Discrimination against Women highlighted the persistence of such laws at the occasion of the twenty-fifth anniversary of the adoption of the Convention in 2004. The Committee pointed out that in no country in the world has women's full de jure and de facto equality been achieved. Discriminatory laws are still on the statute books of many States parties. The coexistence of multiple legal systems, with customary and religious laws governing personal status and private life and prevailing over positive law and even constitutional provisions of equality, remains a source of great concern. Nationality laws also continue to discriminate against women by curtailing their capacity to confer their nationality to their children. Women continue to experience discrimination and disadvantage in the enjoyment of rights to own and inherit property and in access to economic resources and social benefits and services. Women are far from enjoying equal and full participation in political and public spheres, especially at decision-making levels. Criminal law, especially in relation to sexual violence and crimes, continues to be discriminatory, inadequate or poorly enforced.

B. International mechanisms

12. A number of mechanisms monitor and support implementation of the above-mentioned instruments and documents and, therefore, deal, to some extent, with laws that discriminate against women as part of their larger mandates. The following sub-sections review the mandates and/or practice of the human rights treaty bodies; the special thematic procedures of the Commission on Human Rights; and the Commission on the Status of Women in relation to laws that discriminate against women.

Human rights treaty bodies

13. Human rights treaty bodies are composed of experts elected by meetings of States parties and monitor the implementation of the seven core United Nations human rights treaties.[3] States which have not ratified or acceded to the respective instruments are not subject to such monitoring. A core function of treaty bodies is the consideration of reports submitted periodically by States parties on measures taken to give effect to the provisions of the treaty at the national level. The consideration takes place in the form of a constructive dialogue between the treaty body and the respective State party.[4] The concluding comments/observations of the respective committees contain recommendations addressed specifically to the State party on further measures required to enhance compliance with its treaty obligations. The reports, the constructive dialogue and the concluding comments/observations may address laws that discriminate against women.

14. In general, treaty bodies examine implementation of treaties by States parties that have submitted their national reports. Such reports are due one year (two years in the case of the Convention on the Rights of the Child) after ratification, and subsequently every four to five years (every two years in the case of the Convention on the Elimination of Racial Discrimination).[5] The ability of the treaty bodies to

monitor implementation in a timely and effective manner may be limited by a number of factors, including lack of timely adherence by States parties to their reporting obligations or insufficient meeting time for treaty bodies to discharge all mandated responsibilities.

15. An analysis of recent concluding comments/observations[6] indicates that while treaty bodies address sex discriminatory laws in their work, they do not do so in a systematic manner or to the same degree.

16. Among the seven treaty bodies under discussion here, the Committee on the Elimination of Discrimination against Women takes the most consistent and systematic approach to reviewing the persistence and impact of sex-discriminatory laws. The Committee promotes the achievement of women's de jure as well as de facto or substantive equality. Elimination of discriminatory legislation is a critical aspect of this approach. The Committee has clarified the obligation of States parties' to ensure that there is no direct or indirect discrimination in their laws (see A/59/38, annex I) and takes the view that gender-neutral legal provisions may also be discriminatory or perpetuate discrimination against women.[7]

17. The Committee has frequently raised concerns about the persistence of sex-discriminatory provisions in family and/or personal status codes and labour legislation, as well as in regard to nationality and citizenship and property and inheritance rights. The Committee has regularly addressed discriminatory provisions in criminal law, especially in relation to sexual violence and crime, and has called on States parties to amend penal codes and bring them in harmony with the Committee's general recommendation No. 19 on violence against women. The Committee has also often expressed concern about the continued existence of discriminatory customary laws and the coexistence of multiple legal systems, requesting States parties to harmonize statutory as well as customary laws with the provisions of the Convention.[8]

18. The Human Rights Committee has addressed the persistence of sex-discriminatory laws in the fields of marriage, divorce, inheritance, property, nationality and education. It has also devoted attention to sex discrimination in penal and civil codes, labour laws and laws governing succession, as well as to the persistence of customary laws that discriminate against women.[9]

19. The Committee on Economic, Social and Cultural Rights has raised concerns about sex-discriminatory provisions in areas such as labour, family and/or personal status and civil and commercial law. It has also paid attention to sex-discriminatory laws in relation to inheritance and property and political participation.[10]

20. The Committee on the Rights of the Child has often addressed laws, including customary laws that discriminate against the girl child, especially in relation to the legal age of marriage. The Committee has also devoted attention to sex discrimination in personal status law and in legal provisions governing issuance of passports. It has expressed concern about the discriminatory impact of certain laws on girls' school attendance.[11]

21. There are few examples where the Committee on the Elimination of Racial Discrimination and the Committee against Torture have pronounced themselves in regard to sex-discriminatory laws. When it has done so, the Committee on the Elimination of Racial Discrimination has considered the issue of sex discrimination in regard to labour and nationality laws.[12]

22. Four treaty bodies, the Committee on the Elimination of Discrimination against Women, the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Committee against Torture, may also consider complaints or communications from individuals or groups of individuals claiming that their rights under the respective treaty have been violated by a State party.[13] Under these procedures, Committees may find violations of treaty provisions, and indicate ways in which a State is expected to provide redress to the claimants. Two treaty bodies, the Committee on the Elimination of Discrimination against Women and the Committee against Torture, may also, on their own initiative, undertake inquiries into situations of serious, grave or systematic violations of Convention rights in a State party if they have received reliable information.[14] In such cases, the treaty body may issue findings and recommendations to the State party concerned. These optional procedures may deal with laws that discriminate against women and the findings and recommendations of the bodies concerned may include a recommendation to repeal or amend such laws.

Special procedures of the Commission on Human Rights

23. The Commission on Human Rights uses the mechanisms of special procedures to address either specific country situations[15] or thematic issues. Special rapporteurs are usually appointed by the Chairperson of the Commission on Human Rights and report to the Commission itself.

24. While mandates vary, the main functions of the special thematic procedures are to: prepare analytical reports on a particular issue of concern; carry out country visits relevant to their mandates; consider complaints from victims of human rights violations; and intervene with Governments on the behalf of the victims. The special procedures support the Commission on Human Rights in its role in promoting and protecting human rights and fundamental freedoms, while the Commission oversees their work. Thematic mandates are usually reviewed every three years.

25. For purposes of the present report, an examination of resolutions establishing special thematic procedures revealed that few are explicitly mandated to address discrimination based on sex. One example is the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, who is mandated to pay particular attention to the situation of women and the relationship between the effective promotion and the protection of the right to freedom of opinion and expression and incidents of discrimination based on sex (see Commission on Human Rights resolution 2002/48). Some thematic mandates refer to the need to address discriminatory laws without specifying on what grounds. Examples include the mandate on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (see Commission resolution 2005/24) and the mandate on adequate housing as a component of the right to an adequate standard of living (see Commission resolution 2000/9).

26. The only thematic mandate that explicitly refers to women's de jure discrimination is that of the Special Rapporteur on violence against women, its causes and consequences. The relevant resolution elaborates that all forms of violence against women occur within the context of de jure and de facto discrimination against women and the lower status accorded to women in society and are exacerbated by the obstacles women often face in seeking remedies from the State (see Commission resolution 2003/45). Subsequent resolutions have drawn

attention to the need to abolish laws that constitute discrimination against women. (see Commission resolution 2005/41).

27. Some thematic mandates include general references to the Convention on the Elimination of All Forms of Discrimination against Women or to one of its articles. This is the case for the mandates on violence against women, its causes and consequences; on adequate housing as a component of the right to an adequate standard of living; and on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Almost all the mandates now include a requirement for the mandate holders to apply gender perspectives in their work.

28. The analysis also showed that thematic special procedures are mandated to work in coordination and dialogue with other actors, particularly within the United Nations system, although very few thematic procedures are specifically asked to cooperate with the Commission on the Status of Women. One example is the mandate of the Special Rapporteur on violence against women, its causes and consequences, which refers to the need for close cooperation with the Commission on the Status of Women and requests the Secretary-General to ensure that the reports of the special rapporteur are brought to the attention of the Commission on the Status of Women, as well as the General Assembly and the Committee on the Elimination of Discrimination against Women (see Commission resolution 2005/41). Similarly, resolutions on the mandate of the Special Rapporteur on the right to education refer to the need for the special rapporteur to make his/her reports available to the Commission on the Status of Women whenever they concern the situation of women in the field of the right to education (see Commission resolution 1998/33). Resolutions on the role of the Independent Expert on the question of human rights and extreme poverty have also indicated that the Expert's reports should be made available to the Commission on the Status of Women in particular years (see Commission resolution 1998/25).

29. Special thematic procedures address their recommendations to States and, through the Commission on Human Rights, to entities of the United Nations system and the international community, including non-governmental organizations. They approach their mandates from a global perspective, whereas human rights treaty bodies interact only with States parties and address their recommendations to specific countries. It has been argued that the existence of the special procedures and the treaty body system cannot be properly understood as creating duplication and overlap as the implicit purpose of each system is substantially different.[16]

Commission on the Status of Women

30. The Commission on the Status of Women, established in 1946, is responsible for making recommendations to the Economic and Social Council on measures aimed at promoting gender equality and the advancement of women. The Commission was given a central role in monitoring the implementation of the Beijing Platform for Action, adopted in 1995,[2] and the Commission's methods of work, including its multi-year programme of work, respond to this mandate.

31. The Commission has used the mechanism of a special rapporteur only once, in 1968, when it appointed a special rapporteur to undertake research on the status of women and family planning, which culminated after five years in a report submitted to the Commission.

32. The Commission's mandate includes responsibility for addressing violations of women's human rights, which it implements through its communications procedure.

33. The Working Group on Communications on the Status of Women (made up of five members of the Commission appointed by the Commission) meets in closed meetings prior to each session of the Commission. It considers an annual report prepared by the Secretary-General, which contains summaries of communications concerning the status of women and replies thereon from Governments. The Working Group considers all communications and the replies of the Governments concerned, with a view to bringing to the Commission's attention those that appear to reveal a consistent pattern of reliably attested injustice and discriminatory practices against women. The report of the Working Group indicates the categories in which communications are most frequently submitted.

34. The Commission on the Status of Women may make recommendations to the Economic and Social Council on action the Council may wish to take on the emerging trends and patterns of communications. It is not empowered to take other action. The procedure does not provide individuals with an opportunity to seek redress, nor does it provide an opportunity for undertaking a detailed study on any particular situation. (E/CN.6/1991/10, paras. 83 and 84).

35. Communications typically but not exclusively come from women or groups of women who claim to be victims of human rights violations or who have knowledge of the violations of the human rights of other women. Successive Working Groups have informed the Commission about allegations of: physical violence against women in official custody; sexual harassment of women at the workplace; violations of the rights of women to education and to political participation; de facto discrimination against women in employment; allegations of violence against women by army, security and occupation forces; discrimination against women in marital relations; restrictions on freedom of movement; sexual violence; restricted access to safe and legal abortions; restrictive or coercive family-planning policies; gender-based discrimination in sports; violation of the right to freedom of expression; violation of the right to the enjoyment of full citizenship; rape as a weapon of war; female infanticide; sexual enslavement; harmful traditional practices; unequal enjoyment of training opportunities and unequal pay for work of equal value; violations of the rights of migrant, indigenous and minority women; trafficking in women and girls; and particularly inhuman punishment.

36. In 2000 and 2001 the reports of the Working Group indicated that communications had been received covering "discriminatory provisions against women in national legal systems".[17] The Commission made no recommendations to the Council for action. In 2002, the Working Group noted "discrimination against women, including through restrictions on their freedom of movement, stemming from law and custom".[18] The Commission made no recommendations explicitly concerning discriminatory legislation to the Council for action. In 2004 the Working Group was concerned about "the application under law of certain forms of criminal punishment of women that constitute cruel, inhuman or degrading treatment in violation of international human rights standards".[19] In this instance, the Working Group made a suggestion to the Commission on the Status of Women that it might wish to request the Council to remind States of relevant commitments that they have made, including to "review national laws, including customary laws and legal

practices in the areas of family, civil, penal, labour and commercial law ...".[19] Also in this case, the Commission made no recommendation to the Council.

37. In 2005, the Working Group in its report to the Commission indicated that one communication had contained allegations of instances of legislation that discriminated against women in various areas in forty separate States. The Working Group expressed concern over "the continued existence of legislation or practices in many areas either intended to or with the effect of discriminating against women, despite the international obligations and commitments of States and their constitutional provisions to outlaw such discrimination".[20] The Working Group made no proposals or suggestions and the Commission made no recommendations to the Economic and Social Council for action.

38. As illustrated, communications dealing with discriminatory legislation have rarely been considered under the procedure. In the most recent instance, the communication triggered concern, but it did not result in the Commission taking further action other than to note the report of the Working Group and include it in the Commission's annual report to the Economic and Social Council. Additionally, as the procedure currently functions, no opportunity is provided for sustained or focused attention by the Commission, including any follow-up in respect of concerns that may have been raised in previous years.

III. Views of Member States, the Committee on the Elimination of Discrimination against Women and the Office of the United Nations High Commissioner for Human Rights

39. Several Member States, including Argentina, Canada, Guinea, Lebanon, Maldives, Mauritius, Palau, the Philippines and the Republic of Korea, expressed their support for the creation of a special rapporteur on laws that discriminate against women, as did OHCHR. Namibia indicated that it had no objections while Uruguay considered that such a rapporteur would be useful. Several other replies, including those from the Holy See, Mexico, New Zealand and the United States of America, were also in principle supportive of the creation of a special rapporteur, provided its mandate did not duplicate the work of existing mechanisms. Other Member States, including Barbados, Colombia, the Islamic Republic of Iran, Jamaica, Pakistan, the Russian Federation, Turkey and Viet Nam, did not support or consider necessary the creation of a special rapporteur. The States members of the European Union and Switzerland could not comment definitely on the advisability of such a new mechanism without a specific proposal or a draft mandate for such a special rapporteur.

40. While the Committee on the Elimination of Discrimination against Women fully appreciated the desire of the Commission to carry out its mandate in this area, it did not see the necessity for establishing such a mandate. The Committee made proposals for the mandate of a special rapporteur should the Commission decide to pursue the establishment of such a mechanism.

41. Mauritius and Tonga provided information on measures taken at the national level to address laws that discriminate against women.

42. Responses addressed specific aspects concerning the creation of a special procedure on laws that discriminate against women. These are summarized below under thematic headings.

Reform discussion concerning the human rights machinery

43. Some Member States drew attention to the ongoing discussions on reform of United Nations human rights machinery. According to New Zealand, consideration of the establishment of a special rapporteur should be informed by the ongoing process of strengthening the special procedures of the Commission on Human Rights. Pakistan noted that agreement had been reached during the 2005 World Summit on the replacement of the Commission on Human Rights with the Human Rights Council. The mandate, composition, size and modalities of the Human Rights Council would be determined through open and transparent negotiations. Thus, any selective proposal to appoint a special rapporteur was premature and inconsistent with the overall approach to discuss the entire range of special mechanisms under the human rights machinery.

44. The Russian Federation believed that it would be premature to discuss the creation of new mandates pending completion of United Nations reforms. In order to avoid further unnecessary duplication of various tasks of the human rights system, the Islamic Republic of Iran suggested to discuss the establishment of a special rapporteur within the framework of the reform of the human rights machinery so as to ensure that the special mechanisms and human rights functions of the future Human Rights Council and the activities of the Commission on the Status of Women would not overlap.

Relationship between a special rapporteur and existing United Nations mechanisms

45. Several Member States addressed the relationship that a special rapporteur on laws that discriminate against women would have with the Commission on the Status of Women, the Committee on the Elimination of Discrimination against Women and the special procedures of the Commission on Human Rights.

46. According to the European Union, the debate on the appointment of a special rapporteur should be conducted in the broader context of the future work programme of the Commission on the Status of Women and the future role of its communications procedure. Consideration would have to be given to the added value a special rapporteur would bring to the work of the Commission. New Zealand stressed that any proposal for the creation of a new special rapporteur had to be appropriate to the Commission's needs. Mauritius and the Republic of Korea stated that a special rapporteur could provide the Commission with a way to play a more proactive role in promoting gender equality and that it would add significant value to the work of the Commission.

47. The Philippines and the Republic of Korea suggested that the appointment of a special rapporteur on laws that discriminate against women was in consonance with the mandate of the Commission to ensure the effective implementation of the Beijing Platform for Action and the outcome of the twenty-third special session of the General Assembly through "more practical and action-oriented initiatives and outcomes". While the Commission examined implementation of the Platform for Action along thematic lines, legal discrimination cut across many critical areas of

concern. A special rapporteur could complement this work with a cross-cutting examination of laws that discriminate against women in those areas, have a global scope and make global policy recommendations to the Commission.

48. According to Barbados, Colombia, Jamaica, the Russian Federation and Turkey, mechanisms to eliminate discrimination against women, including sex-discriminatory laws, already existed, notably the Committee on the Elimination of Discrimination against Women, the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on trafficking in persons, especially women and children and the Commission on the Status of Women. Turkey noted that, although the mandates of the Special Rapporteur on violence against women, its causes and consequences and the Special Rapporteur on trafficking in persons, especially women and children did not specifically refer to laws that discriminate against women, they nevertheless took into consideration such laws in their work. Colombia pointed out that the proliferation of new rapporteurs generated a duplication of functions and loss of recognition for existing mechanisms. The Committee on the Elimination of Discrimination against Women suggested that the Commission might consider other ways of pursuing the same objective.

49. Canada and Switzerland emphasized the need to utilize existing mechanisms for the evaluation of national laws that discriminate against women, such as the reporting mechanism under the Convention on the Elimination of All Forms of Discrimination against Women and the individual complaints mechanism under the Optional Protocol. New Zealand argued that a mandate such as the proposed special rapporteur should not cut across the mandate and work of the Committee. The Philippines and the Republic of Korea indicated that the work of a special rapporteur would complement the functions of the Committee in monitoring the implementation of the Convention on the Elimination of All Forms of Discrimination against Women. Switzerland indicated its support for strengthening the Committee. On the other hand, Jamaica noted that laws that discriminate against women could be addressed through further strengthening the Committee on the Elimination of Discrimination against Women and indicated that the Commission on the Status of Women should continue to pursue full implementation of the Convention by States parties and encourage more States to ratify it.

50. OHCHR suggested that the mandate should be carefully designed to maximize its impact. The Office noted that a special rapporteur on laws that discriminate against women would be an important tool in the implementation of the Beijing Declaration and Platform for Action and human rights instruments by complementing, and not duplicating, the work of the relevant treaty bodies and special procedures established by the Commission on Human Rights. It would be particularly important to ensure that the new mechanism did not duplicate the work of existing ones. The new mandate should take into account the work of existing human rights treaty bodies and the mandates established by the Commission on Human Rights, such as the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on trafficking in persons, especially women and children, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and the Special Rapporteur on the human rights of migrants.

51. Argentina, Lebanon and OHCHR stressed the importance of establishing a strong institutional link, or coordination mechanism, between a special rapporteur on laws that discriminate against women and other human rights bodies working on the issue of discrimination against women. The European Union recommended that consideration be given to submitting the reports of the Special Rapporteur to the Commission on the Status of Women and the Commission on Human Rights, while Mexico highlighted the need that such reports should also be submitted to the Commission on Human Rights. According to the Philippines, reports of special rapporteurs could inform the work of both the Commission on the Status of Women and the Committee on the Elimination of Discrimination against Women.

Mandate of a special rapporteur on laws that discriminate against women

52. Canada, the European Union, Guinea, Mexico, New Zealand and Switzerland stressed the need for the Commission to discuss and/or clarify the mandate of a new special rapporteur in order to avoid duplication with existing mechanisms. Several Member States as well as the Committee on the Elimination of Discrimination against Women and OHCHR provided suggestions on the terms of reference for such a mandate.

53. Canada, Guinea, Mauritius and the United States of America suggested that a special rapporteur on laws that discriminate against women should compile information on sex-discriminatory laws in force around the world, provide information on progress made in eliminating laws that discriminate against women during reporting periods and highlight ways in which Member States have used law reform effectively to counter legal discrimination against women. According to the United States, a special rapporteur should focus on laws that discriminate against women in political participation, participation in civil society and government, in regard to economic opportunities, including employment opportunities and ownership and inheritance of property, in the judicial system and in regard to laws that permit forced marriage. The United States indicated that it would not be able to support the creation of this new special rapporteur if its mandate duplicated the work of already existing mechanisms or reached beyond the above-mentioned areas.

54. The Committee on the Elimination of Discrimination against Women suggested that, should the Commission pursue the establishment of such a mechanism, the mandate should include a requirement to address various types of discriminatory laws; customary and other forms of law (common and codified law); and de jure and de facto discrimination against women. The mandate should clearly spell out the scope of the discriminatory legislation to be covered and should also include indirect discrimination. Lastly, the Committee indicated that the Commission should consider the ways in which the mandate holder could have a significant political impact at the national level.

55. OHCHR indicated that there may be debate over whether a possible new special rapporteur on laws that discriminate against women should only examine de jure discrimination (and discrimination in the administration of justice) or whether a new mechanism should also address de facto discrimination. It would be important, however, to ensure that legislation that enshrined discrimination was entirely eliminated, as a first step towards the elimination of all forms of discrimination. In this regard, OHCHR stated that it may be useful to have a mechanism focusing exclusively on de jure discrimination. The new special rapporteur should focus

exclusively on undertaking an in-depth analysis of national legislation in identified subjects and countries of concern. In particular, the rapporteur could study a number of areas that would be particularly pertinent to eliminate discrimination against women, such as family, civil, penal, labour and commercial laws. The special rapporteur should also follow closely any proposed amendment of discriminatory laws.

56. The Philippines noted that a special rapporteur on laws that discriminate against women should engage in dialogue with Member States and share information, strategies and recommendations on how to address issues and concerns common to Member States. Canada and Mauritius proposed that a special rapporteur should disseminate best practices among Member States. According to Lebanon, the special rapporteur on laws that discriminate against women should also collect complaints.

57. Canada, Guinea and Lebanon recommended that a special rapporteur should provide assistance to Member States who were modifying and/or updating their sex-discriminatory laws since, as noted by Canada, such laws continued to exist despite the adoption of the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol. Canada noted with concern that several States parties continued to maintain reservations to the Convention. Guinea also indicated that the special rapporteur could play a role in the elaboration of national training programmes and projects for professionals, law enforcement agents, decision-makers and civil society organizations, as well as support regional and subregional human rights mechanisms.

Criteria for selecting a special rapporteur on laws that discriminate against women

58. The Holy See suggested that the choice of a special rapporteur on laws that discriminate against women needed to be guided by good common standards and the mature search for solutions to violations of international humanitarian law. Candidates for the post should demonstrate experience in searching for solutions to violations of international law.

Financial implications

59. Barbados, Jamaica and Turkey raised concerns about the possible financial implications of creating a new mechanism, especially in view of scarce resources. Switzerland indicated that, should such a mechanism be created, it would have to be provided with sufficient resources to be able to carry out its work effectively.

IV. Implications of the creation of a special rapporteur, and recommendations

60. **The importance of eliminating laws that discriminate against women has long been recognized. The 180 States that are party to the Convention on the Elimination of All Forms of Discrimination against Women are obligated to do so under international law. The Beijing Declaration and Platform for Action provide comprehensive policy guidance for gender equality and the empowerment of women. Nevertheless, de jure discrimination persists in many**

areas, constituting an obstacle to women's full enjoyment of their rights under domestic laws. Elimination of de jure discrimination would not require significant investment of resources or the longer time periods that may be needed to modify social and cultural patterns of behaviour, as was pointed out by OHCHR.

61. While human rights treaty bodies and special procedures to some extent address discrimination against women within their mandates, their attention to such discrimination is not systematic. Attention to laws that discriminate against women is even less systematic. None of the existing mechanisms has a specific mandate to address laws that discriminate against women. The exception is the Committee on the Elimination of Discrimination against Women, which consistently addresses de jure inequality within its comprehensive mandate of tackling all forms of discrimination against women in States parties. As shown above, sex-discriminatory legislation has also not received systematic attention under the communications procedure of the Commission on the Status of Women.

62. A dedicated mechanism that would tackle such laws as its primary and exclusive concern, rather than as incidental to a broader mandate, from a global perspective could provide the necessary momentum for change that has so far been absent. A special rapporteur on laws that discriminate against women could present comprehensive reviews and analysis of existing sex-discriminatory laws and engage with Member States to promote change in this area.

63. A new mechanism of the Commission on the Status of Women would significantly enhance the Commission's capacity to monitor implementation of the Beijing Platform for Action and the outcome document in the area of discriminatory laws, especially since they contain a time-bound target for achieving this goal. Regular annual dialogue with the mandate holder would enrich the debates in the Commission. A special rapporteur could examine systematically the legislative aspects of the Commission's themes, especially those in its multi-year programme of work, and her/his findings and recommendations would enhance the Commission's work in relation to those themes. A special rapporteur could also pay sustained attention to particular areas of law over a longer period of time, monitor progress and challenges in eliminating discriminatory laws and suggest ways to tackle them. The Commission's consideration at its fiftieth session of its working methods and future multi-year programme constitutes a timely opportunity to consider, within this framework, the question of such a mechanism and its specific mandate.

64. The analytical reports a special rapporteur would prepare could also be beneficial to the Committee on the Elimination of Discrimination against Women and to other treaty bodies, and could add a global and thematic perspective on laws that discriminate against women and ways for eliminating them to the work of treaty bodies. They could also enhance the work of thematic special procedures within their respective mandates by highlighting the implications of sex-discriminatory legislation in different areas. Interaction between the mandate holder and the Committee, as well as with other bodies should be systematized from the outset.

65. **A special rapporteur on sex-discriminatory legislation could also further strengthen and enhance the links between the intergovernmental body — the Commission on the Status of Women, and the expert body, the Committee on the Elimination of Discrimination against Women, in pursuit of the common goal of the realization of gender equality. Attention to the legal basis of gender equality in all States would enhance the Commission's ability to promote effective and complementary policy approaches for implementation of the Platform for Action at the national level.**

66. **Consideration of the question of the advisability of the creation of a special rapporteur on laws that discriminate against women should include a discussion of the framework for the mandate, including the human rights and policy instruments which should guide the work.**

67. **The Commission should also consider the scope of work of a special rapporteur, such as a focus on de jure discrimination against women, and areas of law to be covered. Consideration should be given to the working methods, where responsibility for thematic analysis of sex-discriminatory laws, interaction with Member States, including country visits aimed at information collection, advice and advocacy, and receipt of communications and related follow-up with Member States should be considered. Attention should also be given to the qualifications of the mandate holder, with a focus on expertise and independent status.**

68. **As discussions on reform of the human rights mechanisms continue, coordination between the Commission on the Status of Women and the future Human Rights Council regarding the work of the special rapporteur will be important. Attention needs to be given to the ways in which a special rapporteur of the Commission on the Status of Women would interact and coordinate with existing mechanisms of the Commission on Human Rights so as to avoid duplication and overlap. A special rapporteur of the Commission on the Status of Women could be catalytic in bringing the attention of existing mechanisms to bear on the gender perspectives of their mandates in regard to discriminatory legislation.**

Notes

[1] Neuwirth, Jessica, addresses some of these aspects in: "Inequality Before the Law: Holding States Accountable for Sex Discriminatory Laws Under the Convention on the Elimination of All Forms of Discrimination against Women and Through the Platform for Action", *Harvard Human Rights Journal*, Volume 18, Spring 2005; see also "Preliminary Proposal for a Special Rapporteur on laws that discriminate against women", paper prepared by *Equality Now*, November 2004.

[2] *Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annexes I and II.

[3] The human rights treaties and treaty bodies are: the International Convention on the Elimination of All Forms of Racial Discrimination/Committee on the Elimination of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights/Committee on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights/Human Rights Committee; the Convention on the Elimination of All Forms of Discrimination against Women/Committee on the Elimination of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment/Committee

against Torture; the Convention on the Rights of the Child/Committee on the Rights of the Child; and the International Convention on the Protection of Migrant Workers and Members of their Families/Committee on Migrant Workers.

[4] Treaty body experts receive also other information, including from non-governmental organizations, United Nations entities and national human rights institutions.

[5] Several treaty bodies also examine implementation of the treaty in the absence of a report.

[6] This analysis is based on the concluding comments adopted by the Committee on the Elimination of Discrimination against Women in the January 2000-January 2005 period, the concluding observations of the Human Rights Committee in the October 2002-November 2005 period, the concluding observations of the Committee on Economic, Social and Cultural Rights in the April 2002-May 2005 period, the concluding observations of the Committee on the Elimination of Racial Discrimination in the March 2003-August 2005 period, the concluding observations of the Committee on the Rights of the Child in the January 2003-September 2005 period, and the concluding observations of the Committee against Torture in the November 2002-May 2005 period. The Committee on Migrant Workers has yet to consider reports of States parties and is therefore not included in this analysis.

[7] The general recommendations of the Committee on the Elimination of Discrimination against Women can be found on the website of the United Nations Division for the Advancement of Women at http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html.

[8] The concluding comments of the Committee on the Elimination of Discrimination against Women are contained in the annual reports of the Committee to the General Assembly and can be viewed on the website of the United Nations Division for the Advancement of Women at http://www.un.org/womenwatch/daw/cedaw/.

[9] The concluding observations of the Human Rights Committee are available on the website of the Office of the High Commissioner for Human Rights at http://www.ohchr.org/english/bodies/hrc/sessions.htm.

[10] The concluding observations of the Committee on Economic, Social and Cultural Rights are available on the website of the Office of the High Commissioner for Human Rights at http://www.ohchr.org/english/bodies/cescr/index.htm.

[11] The concluding observations of the Committee on the Rights of the Child are available on the website of the Office of the High Commissioner for Human Rights at http://www.ohchr.org/english/bodies/crc/sessions.htm.

[12] The concluding observations of the Committee on the Elimination of Racial Discrimination and the Committee against Torture are available on the website of the Office of the High Commissioner for Human Rights at http://www.ohchr.org/english/bodies/cerd/sessions.htm, and http://www.ohchr.org/english/bodies/cat/sessions.htm.

[13] The first Optional Protocol to the International Covenant on Civil and Political Rights; the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; article 22 of the Convention against Torture; article 14 of the International Convention on the Elimination of Racial Discrimination; as well as article 77 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (not yet in force). See the respective provisions for admissibility criteria.

[14] Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; and article 20 of the Convention against Torture.

[15] Country rapporteurs of the Commission on Human Rights are not included as part of the present analysis.

[16] For a comparative analysis of the United Nations human rights treaty bodies and special procedures of the Commission on Human Rights, see Rodley, Sir Nigel, "United Nations Human Rights Treaty Bodies and Special Procedures of the Commission on Human Rights — Complementarity or Competition?", in *Human Rights Quarterly*, Volume 25, No. 4, November 2003.

[17] See E/2000/27 and E/2001/27.

[18] See E/2002/27.

[19] See E/2004/27.

[20] See E/2005/27.